

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY LAGOS IMMEDIATE

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E.O.11652: N/A

TAGS: AFSP, PFOR, AREG, NI

SUBJECT: REAL ESTATE TAX - NIGERIAN GOVERNMENT-OWNED
PROPERTY IN WASHINGTON, D.C.

REF: A. LAGOS 3606 B. STATE 85862 C. LAGOS 3227

1. EMBASSY'S IMPRESSION OF INTERPRETATION OF ARTICLE 34
OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS IS NOT
SHARED BY DEPARTMENT AND IS CONTRARY TO DEPARTMENT'S
LONG STANDING INTERPRETATION AND PRACTICE. IT IS
DEPARTMENT'S VIEW THAT PROPERTY HELD ON BEHALF OF SENDING
STATE FOR "PURPOSES OF THE MISSION" DOES NOT BY DEFINITION
INCLUDE PROPERTY HELD MERELY FOR RESIDENTIAL PURPOSES OF
DIPLOMATIC OFFICERS OTHER THAN THE HEAD OF THE DIPLOMATIC
MISSION. THIS VIEW IS SUPPORTED BY READING OF ARTICLE
1(I) OF CONVENTION WHICH DEFINES "PREMISES OF THE MISSION."
THE FACT THAT THE WORDS "PURPOSES OF THE MISSION" ARE
FOLLOWED BY "INCLUDING RESIDENCE OF THE HEAD OF MISSION"
STRONGLY IMPLIES THAT RESIDENCES OF PERSONS OTHER THAN
HEAD OF MISSION ARE NOT CONSIDERED TO BE USED FOR THE
PURPOSES OF THE MISSION WITHIN THE CONVENTION'S FRAME OF
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REFERENCE.

2. IT IS NOTED THAT THE VIENNA CONVENTION ESTABLISHES THE MINIMUM STANDARD FOR THE EXTENSION OF PRIVILEGES AND IMMUNITIES TO DIPLOMATIC MISSIONS AND THEIR STAFFS. THERE IS NO PROHIBITION AGAINST EXTENDING BY CUSTOM OR AGREEMENT, AND SUBJECT TO RECIPROCITY, MORE FAVORABLE TREATMENT THAN THAT REQUIRED BY THE CONVENTION. EMBASSY'S ATTENTION IS DIRECTED TO ARTICLE 47, PARAGRAPH 2(B). HOWEVER, UNDER EXISTING LEGISLATIVE AUTHORITY IN THE UNITED STATES, THIS COUNTRY IS UNABLE TO EXTEND MORE FAVORABLE TREATMENT UNLESS THERE IS A BINDING INTERNATIONAL AGREEMENT IN FORCE OR UNLESS THERE IS OTHER SPECIAL LEGISLATIVE AUTHORITY. THE U.S. GOVERNMENT HAS NO BASIC OPPOSITION TO RECOGNIZING RESIDENTIAL PROPERTIES AS ELIGIBLE FOR REAL ESTATE TAX EXEMPTIONS AND HAS IN FACT ENTERED INTO BILATERAL TREATIES EXTENDING SUCH EXEMPTIONS TO PROPERTY PURCHASED BY THE SENDING STATE AND USED AS RESIDENCES FOR DIPLOMATIC OR CONSULAR PERSONNEL. IN FACT, IN THE U.S./U.K. CONSULAR CONVENTION (TO WHICH NIGERIA HAS SUCCEEDED), THERE IS SPECIFIC PROVISION FOR THE GRANTING OF REAL ESTATE TAX EXEMPTIONS TO PROPERTY HELD BY THE SENDING STATE AND USED AS RESIDENCES FOR CONSULAR OFFICERS OR CONSULAR EMPLOYEES. (SEE ARTICLES 7(L) AND 12(F) OF THAT CONVENTION.)

3. HOWEVER, IN THE ABSENCE OF SUCH SPECIFIC TREATY PROVISIONS, OR SPECIAL LEGISLATION, EXTENDING MORE FAVORABLE P&I THAN OTHERWISE REQUIRED (E.G., UNDER MULTILATERAL TREATIES, SUCH AS VIENNA CONVENTION) THE U.S. CANNOT REPEAT NOT EXTEND ADDITIONAL PRIVILEGES TO SENDING STATES AND THEIR REPRESENTATIVES MERELY ON THE BASIS OF RECIPROCITY.

4. DEPARTMENT HOPES THAT ABOVE INFORMATION WILL BE HELPFUL TO EMBASSY IN CLEARING UP ANY MISUNDERSTANDING THAT MAY HAVE EXISTED. RUSH

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